

Core, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/18/2011

12 EAST 12 ASSOCIATES, LP,

Plaintiff,

vs.

CASE NO.: 11 Civ. 2969 (DLC)(AJP)

WHISTLER TREE, INC. d/b/a GOTHAM 50
BAR AND RESTAURANT, and JOHN DOES I
to X,

Defendants.

STIPULATED ORDER AND STAY OF PROCEEDINGS

WHEREAS, plaintiff, the owner of the restaurant Gotham Bar and Grill, located in downtown Manhattan, filed the complaint in this action on May 2, 2011, alleging that defendants' use of the name GOTHAM 50 in connection with its restaurant, located in midtown Manhattan, constituted trademark infringement, trademark dilution and unfair competition under the Lanham Act and New York law; and

WHEREAS, on May 6, 2011, this Court granted plaintiff a temporary restraining order (the "TRO") that, among other things, enjoined defendants from using the names GOTHAM and GOTHAM 50 in connection with their restaurant, and from using the domain name www.gotham50.com (the "Accused Domain Name"), and scheduled an evidentiary hearing on plaintiff's motion for preliminary injunction for May 23, 2011; and

WHEREAS, on or about May 7, 2011, defendants opened their restaurant under the name "G-50 Bar and Grill," and currently host the web site for their restaurant at the domain name, www.g-50nyc.com, (the "G-50 Web Site"); and

WHEREAS, the parties are engaged in good faith settlement negotiations and have reported that they have executed an agreement in which, among other things, the parties agreed jointly to request that the Court stay all proceedings in this matter for ninety (90) days and extend and modify the TRO as set forth below; it is hereby

ORDERED, that all proceedings and obligations of the parties in this matter, including without limitation (i) the parties' obligation to mediate before Magistrate Judge Peck, (ii) defendants' obligation to answer or otherwise respond to the complaint, and (iii) plaintiff's motion for preliminary injunction, are stayed until August 15, 2011; and it is further

ORDERED, that the TRO is hereby extended with mutual consent of the parties until the date the Court rules on any preliminary injunction motion that may be decided after conclusion of the stay; and it is further

ORDERED, that the TRO is hereby modified with mutual consent of the parties to permit defendants to use the Accused Domain Name solely for the purpose of redirecting internet traffic to the G-50 Web Site, and that the TRO otherwise remains in force as written; and it is further

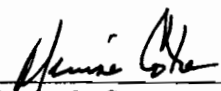
ORDERED, that, in the event this dispute is not settled by August 7, 2011, counsel for the parties shall promptly contact Magistrate Judge Peck's chambers for the purpose of scheduling a mediation in this matter at the earliest possible date. If the parties fail to consummate a settlement after the conference with the Magistrate Judge, the parties will promptly contact the Court about reinstituting the civil action, setting a schedule with respect to plaintiff's motion for preliminary injunction and the parties' pre-trial obligations; and it is further

ORDERED, that this order and the parties' consent to the terms of this Stipulated Order and Stay of Proceedings shall not prejudice any party, or constitute a waiver of any rights, claims or defenses.

Dated: New York, New York
May 17, 2011

*At & La Inc letter is due
August 7, 2011.*

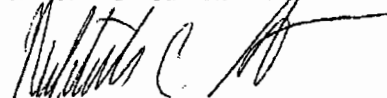
SO ORDERED:


Hon. Denise L. Cote
United States District Judge
May 18, 2011

Consented to by the Parties this 17th day of May, 2011:


For Plaintiff,

SULLIVAN & WORCESTER LLP

By: 
Mitchell C. Stein (MS-3118)
mstein@sandw.com
Andrew T. Solomon (AS-9200)
asolomon@sandw.com
1290 Avenue of the Americas,
29th Floor
New York, New York 10104
Tel: (212) 660-3042
Fax: (212) 660-3001

For Defendants,

MALEK SCHIFFRIN LLP

By: 
Kevin N. Malek
Kevin.malek@malekschiffirin.com
340 Madison Avenue, 19th Floor
New York, New York 10173
Tel: (212) 220-9387
Fax: (603) 805-8478